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State v. Hibbert Appellant's Brief Dckt. 44069

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44069
Plaintiff-Respondent,)	
)	MINIDOKA COUNTY NO. CR 1994-307
v.)	
)	
RICHARD J. HIBBERT,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Richard Hibbert appeals contending the district court erred when it denied his motion to correct an illegal sentence pursuant to I.C.R. 35(a) (*hereinafter*, Rule 35(a)). Specifically, he asserts that his fixed-life sentence is illegal from the face of the record because it is in conflict with United States Supreme Court precedent, such as *Blakely v. Washington*, 542 U.S. 296 (2004), which held that any fact which allowed the sentencing court to increase in sentence beyond the maximum generally authorized by statute has to be found by a jury. Accordingly, he requests this Court vacate his sentence and remand this case for new sentencing hearing. Alternatively, he requests this Court reduce his sentence as it deems appropriate.

Statement of the Facts & Course of Proceedings

In 1994, Mr. Hibbert pleaded guilty to lewd conduct with a minor. (R., p.46.) The district court imposed a fixed-life sentence. (R., p.46.) Mr. Hibbert challenged that sentence on direct appeal, and the Court of Appeals affirmed. (R., p.26 (citing *State v. Hibbert*, 127 Idaho 277 (Ct. App. 1995))¹.)

In 2016, Mr. Hibbert filed a Rule 35 motion alleging his sentence was illegal.² (R., pp.39-42.) He alleged the imposition of a fixed-life sentence without the possibility of parole was illegal because it was in conflict with *Blakely v. Washington*, 542 U.S. 296 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). (R., pp.40-41.) Specifically, he asserted the district court improperly enhanced his sentence because “the maximum I could be sentence[d] to is life,” but he was given a sentence of “fixed life without the possibility of parole,” and that doing so violated his “Sixth Amendment Right.”³ (R., p.40.) The State objected to his motion, asserting it was not timely and was not supported by new evidence, and that the sentence was appropriate as imposed. (R., p.43.)

The district court concluded the motion was timely as it constituted a Rule 35(a) motion alleging an illegal sentence. (R., p.48.) However, it concluded that, because the

¹ The Court of Appeals’ Opinion only addresses whether the sentence constituted an abuse of the district court’s sentencing discretion; it does not address any claims that the sentence was illegal. See generally *Hibbert*, 127 Idaho 277.

² Mr. Hibbert had filed a previous Rule 35 motion making other, related arguments that his sentence was illegal. (See R., pp.6-11.) However, the denial of that motion is not on appeal here.

³ It appears Mr. Hibbert was referencing his Sixth Amendment right to a jury trial. See *Blakely*, 542 U.S. at 298 (indicating that was the right to trial by jury that was at issue in that case). However, Mr. Hibbert’s motion does not clearly articulate what specific fact needed to be found by a jury in order to impose the fixed-life sentence, as opposed to the life with the possibility of parole. (See generally R., pp.40-41.)

sentence was within the maximum authorized by statute, it was not illegal from the face of the record. (R., p.48.) Accordingly, it denied Mr. Hibbert's Rule 35(a) motion on its merits. (R., p.49.) Mr. Hibbert filed a notice of appeal timely from the district court's final order denying his Rule 35(a) motion. (R., pp.52-54.)

ISSUE

Whether the district court erred by denying Mr. Hibbert's motion to correct an illegal sentence.

ARGUMENT

The District Court Erred By Denying Mr. Hibbert's Motion To Correct An Illegal Sentence

A motion claiming a sentence is illegal pursuant to Rule 35(a) may be raised at any time. See, e.g., *State v. Clements*, 148 Idaho 82, 86 (2009). However, to merit relief on such a motion, the illegality must appear on the face of the record. *Id.* Mr. Hibbert is mindful of the Idaho Supreme Court's decision in *State v. Stover*, 140 Idaho 927, 931 (2005), in which the Supreme Court held *Blakely* and *Apprendi* do not impact on Idaho's sentencing scheme. He is also mindful of the Idaho Supreme Court's decision in *State v. Cross*, 132 Idaho 667, 672 (1999), in which the Supreme Court explained that fixed-life sentences for convictions for lewd conduct are legal, if potentially unreasonable. See also I.C. § 18-1508 (authorizing imprisonment "for a term of not more than life" for convictions for lewd conduct). Nevertheless, Mr. Hibbert maintains that his fixed-life sentence is illegal under *Blakely* and *Apprendi* because it was an improperly-enhanced sentence.

CONCLUSION

Mr. Hibbert respectfully requests that this Court vacate his sentence and remand this case for a new sentencing hearing. Alternatively, he requests this Court reduce his sentence as it deems appropriate.

DATED this 18th day of July, 2016.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of July, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RICHARD J HIBBERT
INMATE #41719
ISCC
PO BOX 70010
BOISE ID 83707

MICHAEL R CRABTREE
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas